

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MAGNACROSS LLC,

Plaintiff,

v.

OKI DATA AMERICAS INC.,

Defendant.

Civil Action No.: 3:20-cv-1959-M

TRIAL BY JURY DEMANDED

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS, ALTERNATIVE MOTION FOR PARTIAL SUMMARY JUDGMENT, AND
MOTION FOR SANCTIONS AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, Plaintiff Magnacross, LLC (“Plaintiff”), and through its counsel of record, hereby files its sealed response in opposition to Defendant OKI Data Americas Inc.’s (“Defendant”) Motion to Dismiss, Alternative Motion for Partial Summary Judgment and Motion for Sanctions [ECF 52], and Plaintiff’s Cross-Motion for Summary Judgment.

Pursuant to LR 56.4(b), to the extent Defendant’s Motion [ECF 52] is construed by the Court to be a Motion for Partial Summary Judgment, Plaintiff hereby states that it complies with LR 56.4(a) as each of the required matters shall be set forth in Plaintiff’s brief.

Plaintiff’s Cross-Motion for Summary Judgment

Pursuant to Fed. R. Civ. P. 56, Plaintiff hereby submits its cross-motion for summary judgment. Plaintiff seeks summary judgment on Count II of Plaintiff’s Corrected First Amended Complaint, and states that because summary judgment on this issue is fully dispositive of this matter, Plaintiff’s Cross-Motion is a Motion for full Summary Judgment.

Summary

Pursuant to LR 56.3(a), Plaintiff provides the following concise statement of the elements of each claim or defense as to which summary judgment is sought. Plaintiff notes that the accompanying brief complies with LR 56.3(a)(2) and LR 56.5(c).

Summary Judgment is respectfully sought by Plaintiff on Count II of Plaintiff’s Corrected First Amended Complaint, Breach of Contract (Breach of Valid Settlement Agreement Reached on January 18, 2021 at 4:08pm Eastern Time). Specifically, summary judgment is sought on the following elements: (1) a valid contract existed between the Plaintiff and the Defendant; (2) the Plaintiff tendered performance or was excused from doing so; (3) the Defendant breached the terms of the contract; and (4) the Plaintiff sustained damages as a result of the Defendant’s breach.

For the reasons stated in the accompanying brief, supported by evidence attached in Plaintiff's Appendix, there is no genuine issue of material fact concerning whether Defendant breached the January 18, 2021 settlement agreement and Plaintiff respectfully requests the Court deny Defendant's Motion to Dismiss, Alternative Motion for Partial Summary Judgment and Motion for Sanctions [ECF 52] in its entirety, and concurrently grant Plaintiff's Cross-Motion for Summary Judgment.

Dated: August 19, 2021

Respectfully submitted,

/s/ Isaac Rabicoff
Isaac Rabicoff
Rabicoff Law LLC
73 W Monroe St
Chicago, IL 60603
(773) 669-4590
isaac@rabilaw.com

Papool S. Chaudhari
State Bar No. 24076978
PRA Law
2800 Bartons Bluff Lane #1902
Austin, TX 78746
Tel. (214) 702-1150
papool@pralawllc.com

Counsel for Plaintiff
Magnacross LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on all counsel of record who have appeared in this case on August 19, 2021, and who are deemed to have consented to electronic service via the Court's CM/ECF system pursuant to Local Rule CV-5.1(d).

/s/ Isaac Rabicoff
Isaac Rabicoff